

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

DIGITAL REG OF TEXAS, LLC,

No. C 12-1971 CW

Plaintiff,

ORDER DENYING  
MOTIONS TO SEAL  
(Docket Nos. 400,  
412)

v.

ADOBE SYSTEMS INCORPORATED, et  
al.,

Defendants.

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Before the Court are motions to seal certain documents in the parties' papers related to Defendants' motion for partial summary judgment. The Court DENIES Defendants' motion to seal (Docket No. 400) and DENIES Plaintiff's motion to seal (Docket No. 412).

LEGAL STANDARD

The motions to seal concern a dispositive motion and documents connected to a dispositive motion. Thus, to establish that the documents are sealable, the parties "must overcome a strong presumption of access by showing that 'compelling reasons supported by specific factual findings . . . outweigh the general history of access and the public policies favoring disclosure.'" Pintos v. Pac. Creditors Ass'n, 605 F.3d 665, 679 (9th Cir. 2010) (citation omitted). Civil Local Rule 79-5(a) requires that every sealing request "be narrowly tailored to seek sealing only of sealable material." Civil L.R. 79-5(a). This cannot be established simply by showing that the document is subject to a protective order or by stating in general terms that the material is considered to be confidential, but rather must be supported by

1 a sworn declaration demonstrating with particularity the need to  
2 file each document under seal. Civil Local Rule 79-5(a). If a  
3 document has been designated as confidential by another party,  
4 that party must file a declaration establishing that the document  
5 is sealable within seven days of the filing of the motion to seal.  
6 Civil Local Rule 79-5(d).

#### 7 DISCUSSION

##### 8 I. Defendants' Motion to Seal

9 Defendants have moved to file under seal the unredacted  
10 version of their motion for partial summary judgment, the  
11 unredacted version of the declaration of Alex Zvenigorodsky and  
12 several exhibits thereto, and several exhibits to the declaration  
13 of Nathan Greenblatt.

14 Defendants represented that documents or portions of the  
15 documents for which sealing is requested contain highly  
16 confidential information which could harm Defendant Electronic  
17 Arts if publicly disclosed, or contain information designated by  
18 Plaintiff Digital Reg as "Highly Confidential--Outside Counsel  
19 Only" or "Confidential." Defendants submitted the declaration of  
20 Nathan Greenblatt in support of their motion to seal and Plaintiff  
21 timely filed the declaration of Andrew Dinovo in support of the  
22 motion to seal.

23 Having reviewed the declaration of Nathan Greenblatt, the  
24 Court finds that Defendants have not established compelling  
25 reasons for sealing the unredacted version of the Declaration of  
26 Alex Zvenigorodsky in support of Defendants' Motion for Partial  
27 Summary Judgment or the exhibits to that declaration. Defendants'  
28 blanket assertion that "the redacted portions contain highly

1 confidential technical information regarding EA technology,"  
2 Greenblatt Decl. ¶ 2, is not sufficient. Defendants have failed  
3 to state what harm they would experience if this material were  
4 publicly disclosed or to provide any specific reasons, supported  
5 by facts, that could outweigh the public policy favoring public  
6 access to court filings. Accordingly the Court DENIES Defendants'  
7 motion to seal with respect to the declaration of Alex  
8 Zvenigorodsky and the attachments thereto. Pursuant to Civil  
9 Local Rule 79-5(e), within four days of the date of this Order,  
10 Defendants may re-submit the unredacted declaration and  
11 attachments for filing in the public record or they may retain the  
12 declaration and attachments and not make them part of the record  
13 in this case.

14 With respect to the documents designated as confidential by  
15 Plaintiff (Exhibits 1, 2, 5, 10, 11, 13-19 to the Declaration of  
16 Nathan Greenblatt), Plaintiff has filed the declaration of Andrew  
17 DiNovo stating that the relevant documents have been designated as  
18 "Highly Confidential--Attorney's Eyes Only." In addition, the  
19 declaration provides general descriptions of the documents or  
20 deposition testimony. For example, it states that one exhibit is  
21 "a confidential business record with sensitive financial  
22 information that the parties have agreed to maintain as  
23 confidential" and that another "includes, inter alia, confidential  
24 business strategies and financial information." DiNovo Decl. ¶¶  
25 5, 11. With respect to deposition testimony, the declaration  
26 states generally that one witness "testified regarding financial  
27 information, including Digital Reg's balance sheets and its  
28 investors" and another testified "on technical matters and

1 licensing issues." The only reason Plaintiff states for filing  
2 under seal the unredacted version of Defendants' motion for  
3 partial summary judgment is that "the redacted sections discuss  
4 and disclose the confidential information identified above."

5 Plaintiff only describes the subject matter of the exhibits  
6 and makes conclusory statements that it considers the material to  
7 be confidential or sensitive. Plaintiff has failed to state what  
8 harm it would experience if this material were publicly disclosed  
9 or to provide any specific reasons, supported by facts, that could  
10 outweigh the public policy favoring public access to court  
11 filings. Moreover, it is not clear that the pages of deposition  
12 transcripts that have been presented by Defendants contain the  
13 purportedly sensitive testimony Plaintiff describes. Accordingly  
14 the Court DENIES Defendants' motion to seal with respect to the  
15 exhibits to the declaration of Nathan Greenblatt and the  
16 unredacted version of Defendants' motion for partial summary  
17 judgment. Within four days of the date of this order, Defendants  
18 shall file Exhibits 2, 5, 10, 11, 13-19 to the Greenblatt  
19 declaration and the unredacted version of their motion for partial  
20 summary judgment in the public record.

21 The Court notes that Exhibit 1 to the Greenblatt declaration  
22 is the same licensing agreement attached as Exhibit A to the  
23 declaration of Adam Price filed in support of Plaintiff's  
24 opposition to the motion for partial summary judgment. As  
25 discussed below, Plaintiff has filed a motion to file under seal  
26 the licensing agreement. In support of its own motion, Plaintiff  
27 has filed more specific reasons for seeking to file the document  
28 under seal. Accordingly, the Court has denied Plaintiff's motion

1 without prejudice to it filing a renewed motion to file under seal  
2 a redacted version of the licensing agreement instead of seeking  
3 to file the entire document under seal. If, within two days of  
4 the date of this order, Plaintiffs have not filed a renewed motion  
5 to file the licensing agreement under seal, Defendants shall file  
6 Exhibit 1 to the Greenblatt declaration in the public record.

7 II. Plaintiff's Motion to Seal

8 Plaintiff has filed a motion to file under seal the  
9 unredacted version of its opposition and exhibits A, I, J and M to  
10 the declaration of Adam Price filed in support of the opposition.  
11 Plaintiff has filed the declaration of Adam Price in support of  
12 the motion to seal.

13 A. Exhibit A

14 Exhibit A to the Price declaration is the licensing agreement  
15 between Plaintiff and Microsoft. Plaintiff asserts that  
16 "disclosure of the terms of the license would hurt both  
17 signatories by disclosing confidential financial information and  
18 business practices." Specifically, Plaintiff asserts that "public  
19 knowledge of the licensing terms could adversely affect either  
20 party in future negotiations for patent licenses by revealing what  
21 is acceptable to each." The Court finds that this might be  
22 sufficient justification to file under seal certain portions of  
23 the licensing agreement, but it is not sufficient to justify  
24 filing the entire document under seal. Accordingly, the Court  
25 DENIES Plaintiff's motion to seal with respect to Exhibit A of the  
26 Price declaration without prejudice to refiling along with a  
27 proposed redacted version of the agreement. Any renewed motion to  
28 seal must be filed within two days of the date of this order. If

1 Plaintiff does not file a renewed motion to seal, pursuant to  
2 Civil Local Rule 79-5(e), within four days of the date of this  
3 Order, Plaintiff may re-submit the document for filing in the  
4 public record or it may retain the document and not make it part  
5 of the record in this case.

6 B. Exhibits I and J

7 Exhibits I and J are excerpts of transcripts of depositions  
8 of two of Plaintiff's Rule 30(b)(6) witnesses. Plaintiff asserts  
9 that Exhibit I contains "confidential information regarding  
10 Digital Reg products and confidential financial information" and  
11 Exhibit J contains "confidential information regarding Digital  
12 Reg's business strategy, intellectual property and financial  
13 information." Docket No. 412 at 3. Plaintiff further states that  
14 public disclosure of this information could negatively impact it  
15 "in licensing negotiations and could adversely affect its  
16 business." The Court finds that these general statements do not  
17 provide a compelling reason to file these documents under seal.  
18 Moreover, it is not clear that all of the pages of deposition  
19 transcripts that have been presented by Plaintiff contain the  
20 purportedly sensitive information. Accordingly, the Court DENIES  
21 Plaintiff's motion to seal with respect to Exhibits I and J of the  
22 Price declaration. Pursuant to Civil Local Rule 79-5(e), within  
23 four days of the date of this Order, Plaintiff may re-submit the  
24 documents for filing in the public record or it may retain the  
25 documents and not make them part of the record in this case.

26 C. Exhibit M

27 Exhibit M to the Price declaration is an excerpt of a  
28 transcript Defendant Electronic Arts has designated as Highly

1 Confidential--Attorneys' Eyes Only. Defendant Electronic Arts has  
2 not filed a declaration in support of Plaintiff's motion to seal  
3 as required by Local Rule 79-5(d). Accordingly, the Court DENIES  
4 Plaintiff's motion to seal with respect to Exhibit M. Within four  
5 days of the date of this order, Plaintiff shall file Exhibit M to  
6 the Price declaration in the public record.

7 CONCLUSION

8 For the foregoing reasons, the Court DENIES Defendants'  
9 motion to seal (Docket No. 400) and DENIES Plaintiff's motion to  
10 seal (Docket No. 412).

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12 IT IS SO ORDERED.

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14 Dated: 8/8/2013

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CLAUDIA WILKEN  
United States District Judge